IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 208 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAYABEN HARIRAM NAGPAL - Applicant(s)

Versus

JASVANTIBEN D/O KALIDAS ZINABHAI RANA - Opponent(s)

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Appearance :

MR JR SHAH for Applicant(s) : 1,
None for Opponent(s) : 1, 1.2.1,1.2.2

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 06/12/2005

ORAL JUDGMENT

The present Civil Revision Application is filed by the original defendants-tenants being aggrieved of the judgement and order dated 12.03.1998 passed in Civil Suit No.161 of 1993 by the learned Joint Civil Judge (Junior Division) confirmed by the learned Extra Assistant Judge at Navsari in Regular Civil Appeal No.34

of 1998 vide judgement dated 31.03.2005.

2. Mr.Shah, the learned advocate appearing for the petitioner vehemently contended that the courts below have erred in passing the decree of eviction believing the case of the plaintiffs (landlords) about acquiring suitable premises by the tenants.

Mr.Shah, learned advocate vehemently contended that though it is recorded by the learned Judge of the trial court in para 12 of the judgement that the plaintiff was not able to prove the acquisition of suitable premises at 'Sundarvan' by the defendant the learned Judge did not dismiss the suit. He submitted that a grave error is committed by the learned Judge as he has then recorded that in chief examination at exh.42, the plaintiff pleaded that the defendant has shifted to a residence in 'Ashabagh'. He submitted that the learned Judge ought to have held that this amounts to changing of his case by the plaintiff-landlord and the learned Judge ought not have allowed the same. He submitted that if it was not allowed, the learned Judge would not have passed the decree of eviction which in turn came to be confirmed by the learned First Appellate Court.

3. During the course of the arguments it transpired that Exh.42-chief examination of the plaintiff was recorded after an application was given by the plaintiff for the purpose. The defendant-tenant had objected to the said application but then those objections were over-ruled by the learned Judge of the trial court. Thereafter that the learned Judge on appreciation of the case pleaded in chief examination at exh.42 supported by an officer of Navsari Nagarpalika in his deposition at exh.60, the learned Judge on the basis of clinching evidence recorded a finding to the effect that the defendant-tenant has acquired suitable premises and ordered eviction of the tenant.

4. The said finding is endorsed by the learned First Appellate Judge.

5. In view of the aforesaid discussion, this Court finds no reason to interfere with the concurrent findings recorded by the courts below. The Civil Revision Application fails. The same is dismissed with no order as to costs.

(RAVI R. TRIPATHI, J.)

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